

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 1301 OF 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GANDABHAI MOTIBHAI PATEL

VERSUS

SABARKANTHA DIST COOPERATIVE MILK PRODUCERS UNION LTD

Appearance:

MR AM RAVAL for the Petitioner

MR SHUKLA for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 24/08/1999

C A V JUDGMENT

#. The petitioner, a retired employee of the

respondents, by this Special Civil Application praying for declaration of the service rules framed by the respondent at Annexure-D as ultravires to the Gujarat Cooperative Societies Employees (Condition of Service) Rules, 1993 (hereinafter referred to as "Rules, 1993"). The next prayer has been made for the declaration that the age of superannuation of employees of the Cooperative Societies will be governed only by Rules, 1993 aforesaid. Further prayer has been made to declare that the age of retirement of the employees of the Society is to be taken to be of 58 years as per the Rules, 1993. Lastly, the prayer has been made for quashing and setting the order at Annexure-F under which the petitioner was ordered to be retired from the service on 28/2/95 at the age of 55 years.

#. The learned counsel for the petitioner contended that the age of superannuation of the petitioner should have been taken to be 58 years as per the Rules, 1993. It has next been contended that as per the appointment order of the petitioner his retirement age should have been taken to be 58 years. It has next been contended that subsequently this retirement age has been increased to 60 years by the society and even if this is not accepted then as per the Rules, 1993 of the State Government, the age of retirement should have been taken to be 58 years. Lastly, it is contended that before retiring the petitioner at the age of 55 years the opportunity of hearing should have been given to him. In support of this contention the learned counsel for the petitioner placed reliance on the decision of the apex court in the case of Abraham Jacob & Anr. Vs. Union of India reported in 1998(4) SCC 65. Mr.Shukla supported the impugned order.

#. After giving my thoughtful consideration to the submissions made by learned counsel for the parties, I am of the considered opinion that none of the contentions raised by the learned counsel for the petitioner is of any merits and substance.

#. I do not find anything on the record of this Special Civil Application wherefrom it can be taken that in the appointment order of the petitioner his age of the superannuation is mentioned. In respect of the documents at Annexure-C, I find under some resolution of the Society, the age of the retirement of the employees of the Society was raised from 58-60 years. The copy of that resolution has not been produced nor any other document has not been produced in support of this document. Even if it is taken to be correct then too it

is of little help to the petitioner because the Rules of the Society were amended from 1/4/1990. Under these Rules at Annexure-D, I find that the age of retirement is provided at the age of 55 years. This is the Rule which has to be taken care of by the Society and the employees are to be retired at the age of 55 years.

#. Validity of the Rules of the Society have been challenged on the ground as are being contrary to the Rules framed by the State Government. The Rules framed by the State Government are produced on the record of this Special Civil Application at Annexure-C. These are only draft rules and the same cannot be acted upon. The learned counsel for the petitioner has not produced on the record of this Special Civil Application any document to show that these Rules have been finalised ultimately. Draft rules even if it is framed by the State Government cannot supercede the service rules framed by the Society so long as the same are not finalised in accordance with law. These are not binding on the Society and the service rules of the Society only on the basis of the draft rules cannot be held to be ultravires of the same. The decision of the apex court on which reliance has been placed by the learned counsel for petitioner is of little help to him. The age of the superannuation has to be regulated as per the Rules of the Society and what precisely it has been done in the present case.

In the result, the Special Civil Application fails and the same is dismissed. Rule discharged.

(S.K.Keshote, J.)

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